**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 865 OF 2006.**

Ambernath Municipal Council. ... Petitioner.

V/s.

Labour Front,
A trade union of employees. ... Respondent.

Avinash K. Jalisatgi for the petitioner.

S.S.Pakale for the respondent.

**CORAM: V.C.DAGA, J.**

**DATED: 31st March 2006.**

**P.C.:**

. Rule, returnable forthwith.

. Mr.Pakale waives service on behalf of the respondent.

. Heard finally by consent of parties.

. Perused petition.

2. This petition is directed against the order dated 18th August, 2005 passed by the Industrial Court, Thane in Complaint (ULP) No.33 of 2003, whereby it was declared that the petitioner- Municipal Council (respondent therein) was engaged in unfair labour practice under item 9 of Schedule-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("MRTU & PULP Act" for short).

The respondents were directed to cease and desist from engaging in such unfair labour practices with further direction not to recover any amount from its employees as the amounts were paid in terms of the settlement dated 20th October, 1997 relating to the payment of bonus and ex-gratia.

**The Facts :**

3. The factual matrix reveals that on 14th October, 1997, the respondent- union gave notice that the employees would go on strike from the midnight of 15th October, 1997 unless the employees were paid bonus equivalent to 31 days' wages and Rs.4,000/- by way of ex-gratia. Accordingly, all employees proceeded on strike from midnight of 15th October, 1997.

4. The petitioner- Municipal Council unwillingly; rather forced to enter into a settlement dated 20th October, 1997 with the respondent- union agreeing therein to pay bonus equivalent to 31 days' wages and Rs.3,500/- towards ex-gratia with Rs.500/- as gift for Golden Jubilee Celebration, since the strike was causing extreme inconvenience and hardship to the public, though the strike resorted by the employees was illegal. It was also agreed that there would be an increase of 15% in ex-gratia payment for

further three financial years. It was renewed in the year 1998.

5. On 15th October, 1998, the then Chief Officer of the Municipal Council informed the District Collector, Thane that in spite of his adverse opinion that the petitioner- Municipal Council was liable to pay the bonus strictly in accordance with the Government Resolution dated 12th October, 1998, which permitted payment of bonus including ex-gratia amount not exceeding Rs.2,500/-, subject to taking in to consideration its financial position, the General Body of the petitioner- council has sanctioned bonus equivalent to 31 days wages and ex-gratia amount of Rs.3,500/- together with Rs.500/- towards gift for Golden Jubilee celebration.

6. The Chief Officer of the petitioner-Municipal Council by another letter dated 31st October, 1998 requested the District Collector, Thane to quash and set aside the resolution passed by the General Body of the Municipal Council dated 12th October, 1998.

7. The District Collector, Thane vide his order dated 26th March, 1999 held that the bonus and ex-gratia amount paid by the petitioner-Municipal Council to its employees was in violation of the Government Resolution dated 12th October, 1998 and directed recovery from each employee the amount of bonus and ex-gratia payments to the employees in excess of Rs.2,500/-.

8. The respondent- Union challenged the said decision of the District Collector, Thane by filing Writ Petition No. 5757 of 1999 before Division Bench of this Court, which came to be dismissed vide order dated 18th July, 2000. With the result, the decision of the District Collector, Thane dated 26th March, 1999 suspending resolution of the Municipal Council under section 308 of the Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships Act, 1965 ("Municipalities Act" for short) and directing recovery of the excess amount became final and conclusive. In this view of the matter, petitioner- Municipal Council decided to proceed to recover the amount paid to its employees towards bonus and ex-gratia in excess of

Rs.2,500/-

9. The respondent- Union (original complainant), being aggrieved by the aforesaid recovery filed complaint of unfair labour practice against the petitioner- Municipal Council under Item No.9 of Schedule IV of the MRTU and PULP Act being Complaint (ULP) No.33 of 2003 alleging therein that the recovery proposed by the petitioner was in violation of the settlement dated 20th October, 1997.

10. The Industrial Court, vide interim order dated 19th August, 2003 restrained the petitioner-Municipal Council from effecting recovery from the wages of the employees. Both parties filed their documents and led oral evidence. After hearing both sides, the Industrial Court, vide its order dated 18th August, 2005, was pleased to hold that the petitioner’s action of initiating recovery of amount paid towards bonus and ex-gratia in excess of Rs.2,500/- amounted to unfair labour practice under Item 9 of Schedule IV of the MRTU and PULP Act.

11. Being aggrieved by the aforesaid order of the Industrial Court dated 18th August, 2005, the petitioner- Municipal Council invoked writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India challenging the said order.

**Rival Submissions :**

12. Mr.Jalisatgi, learned counsel for the petitioner- Municipal Council submits that the settlement dated 20th October, 1997 was bad and illegal being beyond the authority of the Municipal Council. It had no sanction of the Act. He further submits that under section 308 of the Municipalities Act, the District Collector, Thane was well within his jurisdiction to issue consequential directions to the Municipal Council. The Municipal Council was, therefore, duty bound to act upon the said directions.

13. Mr.Jalisatgi further submits that the order of the District Collector passed under section 308 of the Municipalities Act was a subject matter of challenge in Writ Petition No.5757/1999 before the Division Bench of this

Court, which came to be dismissed by an order dated 18th July, 2000. With the result, order of the District Collector became final and conclusive. That it was not open for the Industrial Court to pass any order contrary to the order of the District Collector.

14. Mr.Jalisatgi further submits that in view of dismissal of the writ petition filed by the complainant- Union, the order dismissing its writ petition would operate as *res judicata* between the parties. If that be so, the complainant- Union (respondent herein) is estopped from canvassing any contention contrary to the order of the Division Bench of this Court. He also pressed into service doctrine of constructive *res judicata*, relying upon the judgment of the Apex Court in the case of **Workmen of Cochin Port Trust v. Board of Trustees**, AIR 1978 SC 1283. Mr.Jalisatgi, learned counsel for the petitioner-Municipal Council, thus, submits that the impugned order is unsustainable and the same is liable to be quashed and set aside.

15. Mr.Pakale, learned counsel for the

respondent tried to support the impugned order but could not take his submission to the logical end. He did not dispute that the decision of the District Collector was challenged by the complainant- Union before this Court by filing writ petition, which was dismissed, with the result, order of the District Collector became final and conclusive.

**Consideration :**

16. Having heard rival parties, the facts stated hereinabove are not in dispute. It is also not in dispute that the order of the Division Bench of this Court rejecting writ petition filed by the complainant would operate as *res judicata* between the parties since the order of the District Collector has attained finality for want of further challenge to the order of the Division Bench of this Court in Writ Petition No.5757/1999. The Apex Court in the case of **Workmen of Cochin Port Trust** (cited supra) ruled as under:

> "..... When any matter which might and ought to have been made a ground of defence or attack in a former proceeding but was not so made, then such a matter in the eye of law, to avoid multiplicity of litigation and to bring about finality in

> it is deemed to have been constructively in issue and, therefore, is taken as decided."

17. In the above view of the matter, the action of the Municipal Council resorting to recover the amount paid to its employees in excess of Rs.2,500/-, by no stretch of imagination can be said to be an unfair labour practice under Item No.9 of Schedule IV of the MRTU & PULP Act. The action of recovery has a sanction of the District Collector under section 308 of the Municipalities Act. This sanction stood to the judicial scrutiny at the hands of Division Bench of this Court as stated supra. In this view of the matter, the impugned order is unsustainable and liable to be quashed and set aside.

18. In the result, petition is allowed. Impugned order dated 18th August, 2005 is quashed and set aside. Rule is made absolute in terms of this order with no order as to costs.

**(V.C.DAGA, J.)**